



Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 763

Case No. 828: STEPANENKO

Against: The Secretary-General
of the International
Maritime Organization

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, Vice-President, presiding;
Mr. Francis Spain; Ms. Deborah Taylor Ashford;

Whereas, on 28 November 1994, Vladimir Alekseevich
Stepanenko, a former staff member of the International Maritime
Organization (hereinafter referred to as IMO), filed an application
requesting the Tribunal to order, inter alia:

"[. ... [that he] be reappointed as a staff member of the
International Maritime Organization (IMO). The IMO
Secretary-General should have maintained [him] in the service
after 30 November 1994 in accordance with the IMO Staff
Regulations and Rules, ... [that the Tribunal] rescind the
IMO Secretary-General's decision of 6 May 1994 ... [and]

2. ... to recognize that the denial by the IMO Secretary-
General to extend [his] appointment was arbitrary and illegal
since it was based on the wishes of the Maritime
Administration of the Russian Federation ...

3. ... to recognize that, ..., [he] was entitled, on the
reasonable grounds and in the exceptional circumstances, to
turn down [his] secondment status as a means of illegal
pressure ... [and that his] former secondment status and
relationship, which [he] discontinued on 26 March 1993, does
not diminish [his] right to be duly and reasonably considered
for further appointment in IMO ...

4. ... to recognize that ... the long-standing personnel policy concerning employment of translators in IMO constituted illegal discrimination ...

5. ...

6. In the event of compensation being paid in lieu of reappointment [he] respectfully request[s] the granting of [an] award in the amount of two year[s'] net base salary."

Whereas the Respondent filed his answer on 31 May 1995;

Whereas, on 8 July 1996, the Tribunal put questions to the Applicant and the Respondent, to which they both provided replies on 11 July 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of IMO on 1 December 1992, as Head of the Russian Translation Section, on a two year fixed-term appointment at the P-5 level, on secondment from the Government of the Russian Federation.

In a letter dated 8 October 1991, to the Acting Head of the Foreign Relations Department of the then USSR Ministry of Merchant Marine, the Secretary-General of IMO noted the dissatisfaction of the USSR Ministry of Merchant Marine with the quality of translation of IMO documents into Russian. He suggested that the Head of Translation be replaced on the expiration of his appointment in November 1992 and concluded "In the forthcoming months we will be in touch with your representatives on appropriate co-operation for the submission of qualified candidates."

In a communication dated 5 May 1992, the Permanent Representative of the Russian Federation to IMO informed the Secretary-General that the Applicant, being "a civil servant in the Department of Maritime Transport of the Ministry of Transport of the Russian Federation", was "available" for the post of Head, Russian Translation Section, "just for the period of two years," and that

"an extension of the initial fixed term appointment should be made after consultation with the Government of the Russian Federation".

On 11 June 1992, the Applicant received a letter of appointment for a fixed-term of two years as Head of the Russian Translation Section. The letter noted under "Special Conditions" that the appointment "is granted on secondment from Government service", with a specified right to return to Government service. It further stated "By signing this Letter of Appointment, you specifically acknowledge that you have agreed to serve the International Maritime Organization on secondment from the service of your Government ...". On 26 June 1992, the Applicant accepted the offer of appointment. On 1 December 1992, he entered the service of IMO.

In a letter dated 26 March 1993, to the Permanent Representative of the Russian Federation to IMO, the Applicant reviewed recent developments in his Section relating to personnel. He noted the decision by the Department of Maritime Transport (DMT) to confirm the extension of the appointment of a translator "whose professional incompetence is beyond any doubt and is not disputed, in private conversations, by the officials of DMT or the RF [Russian Federation] Ministry of Transport." He informed the Permanent Representative that "desiring to be free in discharging my duties ... in full independence and without any external influence," he had decided to consider himself no longer bound by the conditions of secondment contained in his Letter of Appointment.

In a memorandum dated 29 March 1993, the Applicant informed the Director, Conference Division, that he had relinquished his secondment status, because it "might affect my job security if my judgement and discharge of my duties as Head of the Russian Translation Section remain unbiased and professionally honest."

On 16 April 1993, the Deputy Director, Department of Maritime Transport of the Russian Federation informed the Secretary-General, inter alia, that "The Department considers also that [the

Applicant's] unilateral announcement does not carry any ground for alteration of terms and conditions included into the Letter of Appointment ... of 11 June 1992 and has no legal force. Moreover, taking into account the fact that [the Applicant's] declaration directly breaks the principle of the secondment from government service we retain the right to initiate abrogation of the contract between IMO and [the Applicant] and submission of another candidate for the post of Head of Russian Translation Section".

In a memorandum to the Applicant dated 14 May 1993, the Head of the Personnel Section stated that "on 23 June 1992 you accepted the terms and conditions of [the] offer which embrace special conditions governing formal secondment arrangements between the Russian Federation and IMO in respect of your services. As such, you are in no position yourself to amend those terms". In a reply dated 17 May 1993, the Applicant, after acknowledging "that I am not in a position to amend the terms of my contract", stated "I will try to do my best to discharge duties assigned by IMO Secretariat in an efficient and dedicated way, ensuring that the duties in question are not affected in any way by an external to the Organization influence".

On 24 May 1993, the Secretary-General informed the Deputy Director, Department of Merchant Marine of the Russian Federation that the Applicant "has been informed of the Organization's position and has now indicated that he will comply totally with the Organization's Letter of Appointment". In a reply dated 19 October 1993, the Deputy Director informed the Secretary-General that "the Department of Maritime Transport has the intention to replace [the Applicant] after expiration of his appointment in 1994".

In a memorandum dated 30 November 1993, to the Head of the Personnel Section, the Applicant, noting that his contract was due to expire in November 1994, stated that "I would like to apply for renewal of my FT [fixed-term] contract with IMO ..." He added that he had severed his relationship with the Ministry of Transport of

the Russian Federation and that he therefore did "not seek or expect any 'approval' or 'confirmation'" of his appointment by the Russian Federation. He referred to Judgement No. 482, Qiu, Zhou, Yao (1990) of the Tribunal and noted "I cannot consider myself to be on genuine (valid) and formal secondment".

In a reply dated 15 December 1993, the Head of the Personnel Section, referring to his prior memorandum of 14 May 1993, concluded: "Accordingly, on expiry of your fixed-term contract, arrangements will be made for your repatriation to the place of entitlement in the Russian Federation." On 4 January 1994, the Applicant requested the Secretary-General to review the decision not to renew his fixed-term appointment, stating that his non-cooperation in "a cover-up of the professional incompetence" of a translator "had infuriated [the] RF [Russian Federation] Maritime Administration".

On 3 March 1994, the Applicant lodged an appeal with the Joint Appeals Board (JAB). On 6 May 1994, the Secretary-General informed the Applicant that the contested decision "remains unchanged". The JAB adopted its report on 4 November 1994. Its conclusions and recommendation read as follows:

"6 CONCLUSIONS

From the foregoing, the Board concludes as follows:

- (i) - The conditions laid down for an official to be on secondment are fulfilled in the case of [the Applicant]. His status was defined in writing by the competent Russian authorities; the conditions and particularly the duration of the secondment are clearly specified.
- (ii) - [The Applicant] had by signing the Letter of Appointment on 26 June 1992, specifically accepted the terms and the conditions of the offer which embrace special conditions governing formal secondment arrangements between his Government and ... IMO in respect of his services.

- (iii) - The unilateral decision taken by [the Applicant] to consider himself 'not bound any more by the special conditions contained in the letter of the Russian Federation's Permanent Mission to IMO' cannot stand alone, inasmuch as the contract is one and indivisible. Any changes that have to be brought about must be mutually agreed by the three parties concerned; which was not the case in the instance.
- (iv) - In view of the documents in its possession, the JAB is not aware of any approach by IMO to the Russian Federation Authorities, with regard to the renewal of [the Applicant]'s contract.
- (v) - The appellant's previous service in the Russian Translation Section on a permanent contract and his present service on a fixed-term contract have been fully satisfactory.
- (vi) - The Board noted the Secretary-General's decision not to renew [the Applicant]'s contract. However, the Board is of the opinion that:
 - (a) The appellant was not given every reasonable consideration in contravention of the appropriate provisions of Regulations 4.2 and 4.4 of IMO Staff Regulations and Staff Rules, and relevant UN General Assembly resolutions.
 - (b) The appellant was not given a complete explanation for the denial of further employment.

7. CONCLUDING REMARKS

The Secretary-General may wish to reconsider the whole situation in the light of the conclusions outlined in this report."

On 25 November 1994, the Director, Administrative Division, transmitted a copy of the JAB report to the Applicant and informed him as follows:

"The Secretary-General has studied the report very carefully and has concluded that no new facts have been brought forward or new arguments made which would lead him to reconsider his earlier decision."

On 28 November 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The acceptance by the Secretary-General of interference by the Russian Federation in imposing the worthless services of an unqualified translator constitutes an abuse of the secondment arrangement.

2. The special conditions of the Applicant's Letter of Appointment require consultation with the Russian Federation for extension of the appointment but no reference is expressly made to agreement by the Government as a prerequisite for extension.

3. The Applicant's former secondment relationship does not diminish his right and entitlement as an IMO staff member to be duly and reasonably considered for further appointment. General Assembly resolution 47/226 of 8 April 1993 has no retroactive effect.

Whereas the Respondent's principal contentions are:

1. The Applicant cannot unilaterally amend the conditions of his contract of employment which establishes a genuine tripartite secondment.

2. The Applicant's fixed-term appointment expires automatically, without prior notice and carries no right of renewal.

The Tribunal, having deliberated from 8 to 26 July 1996, now pronounces the following judgement:

I. The Applicant accepted the post of Head, Russian Translation Section of the IMO, on a fixed-term appointment for two years, subject, inter alia, to the condition that his appointment was granted on secondment from Government service. The conditions governing the Applicant's right to return to Government service were specified in a letter of 5 May 1992 to the Secretary-General of IMO. The letter referred to the appointment of the Applicant as a solution to the problem of the quality of translation of IMO documents. It also stated that, as the Applicant was a civil servant in the Department of Marine Transport of the Ministry of Transport of the Russian Federation, the Government confirmed that he was available for the post for two years and that the extension of the initial fixed-term appointment should be made after consultation with the Government of the Russian Federation. The Government guaranteed that he would be re-employed in the Civil Service and that his promotion and pension rights were secure.

II. The Applicant accepted appointment on these terms and assumed his post on 1 December 1992. There was agreement on secondment between IMO, the Government and the Applicant. The principles governing secondment, set forth by the Tribunal in Judgement No. 482, Qiu, Zhou and Yao (1990), were observed.

III. Difficulties ensued for the Applicant shortly after he took up his post. These centred around the position of a particular translator, whose services the Applicant assessed as being "unsatisfactory" and whose work he described as worthless because of lack of basic skills and training. The Applicant recommended that there not be an extension of this translator's appointment. However, the appointment was extended.

As a result of these developments, the Applicant felt that his secondment status might affect his job security if he discharged his duties independently and without external influence. He,

therefore, decided to consider himself not bound by the special conditions under which he took up his appointment and so informed the Permanent Representative of the Russian Federation. The Applicant contends that the Russian Federation interfered with the independent exercise of his professional judgement.

IV. While the Tribunal finds that the secondment was valid and that, accordingly, the Applicant was not entitled to extract himself unilaterally from the tripartite agreement, he was entitled, irrespective of the secondment, to expect certain conditions in which to perform his functions.

The Applicant was appointed because of concern with the quality of translation of IMO documents and because of the belief that the Applicant's expertise would bring about some improvement. However, the Applicant felt unable to carry out his mission effectively, because, when he sought to ensure that the appointment of one of the incompetent translators would not be renewed, he apparently faced interference which, he claims, was motivated by considerations extraneous to the standard of performance. The Applicant's position is supported by staff of the Russian Translation Service.

V. The Applicant came to the conclusion that he could secure his future only by severing his ties with his Government. He clearly expected that this action would enable him to renew his fixed-term appointment without Government support. It is evident from the contents of the letter from the Head of the Personnel Section to the Applicant, dated 15 December 1993, that no consideration was given to the Applicant's request for continued employment.

While the Applicant's unilateral action concerning his contract, on secondment, is not sustainable, the Tribunal finds

that the first secondment contract does not preclude the possibility of the Applicant's further employment on a non-secondment basis. In this case, the Respondent could have advertised the post encumbered by the Applicant upon expiration of the appointment on secondment. Were the Applicant to apply for the post under such circumstances, he would be entitled to full and fair consideration without reference to his prior secondment or the consent of his Government. However, the Respondent has indicated to the Tribunal that it was in his interests to continue to fill the post on a secondment basis. Under these circumstances, the post was not advertised. The Tribunal finds that this decision was within the Respondent's discretion.

The Tribunal therefore concludes that the Applicant had no right to the renewal of his appointment, and as the post was not advertised, he had no right to apply and be considered for it.

VI. Nevertheless, the Tribunal finds that the Applicant was subject to improper interference in the performance of his functions, and this interference cannot be justified by secondment. All staff members, whether or not they are serving on secondment, must be able to perform their functions in an independent and professional manner, and it is the Respondent's duty to safeguard such conditions of employment.

VII. For the foregoing reasons, the Tribunal orders that:

- (i) The Applicant be given priority consideration for any post for which he applies and is found to be qualified;
- (ii) The Respondent pay the Applicant nine months of his net base salary, at the rate in effect on the date of his separation from service.

All other pleas are rejected.

(Signatures)

Hubert THIERRY
Vice-President, presiding

Hubert Thierry

Francis SPAIN
Member

Francis Spain

Deborah Taylor ASHFORD
Member

Deborah Taylor Ashford

Geneva, 26 July 1996

R. Maria Vicién-Milburn
R. Maria VICIEN-MILBURN
Executive Secretary